

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION  
NO. 1:09-cv-10309

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NANCY GILL & MARCELLE LETOURNEAU, )  
MARTIN KOSKI & JAMES FITZGERALD, )  
DEAN HARA, )  
MARY RITCHIE & KATHLEEN BUSH, )  
MELBA ABREU & BEATRICE HERNANDEZ, )  
MARLIN NABORS & JONATHAN KNIGHT, )  
MARY BOWE-SHULMAN & )  
DORENE BOWE-SHULMAN, )  
JO ANN WHITEHEAD & BETTE JO GREEN, )  
RANDELL LEWIS-KENDELL, and )  
HERBERT BURTIS, )

Plaintiffs, )

v. )

OFFICE OF PERSONNEL MANAGEMENT, )  
UNITED STATES POSTAL SERVICE, )  
JOHN E. POTTER, in his official capacity as )  
the Postmaster General of the United States of )  
America, )  
MICHAEL J. ASTRUE, in his official capacity )  
as the Commissioner of the Social Security )  
Administration, )  
ERIC H. HOLDER JR., in his official capacity )  
as the United States Attorney General, and )  
THE UNITED STATES OF AMERICA, )  
Defendants. )

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JOINT AFFIDAVIT OF BETTE JO GREEN AND JO ANN WHITEHEAD



Bette Jo Green (“Bette Jo”) and Jo Ann Whitehead (“Jo Ann”) being duly sworn, hereby depose and say as follows:

1. Bette Jo and Jo Ann: We have been a committed couple for 28 years, since 1981. We have known each other for 49 years, ever since we met in college in 1960.

2. Bette Jo and Jo Ann: After 23 years together as a couple, we were legally married on June 7, 2004. We married in the garden of our Jamaica Plain home with friends and neighbors in attendance.

3. Bette Jo: I am 67 years old. Last year, I retired from a 35-year career as a Labor and Delivery Nurse at a large Boston-area hospital. I love nursing and had a fulfilling career. However, labor and delivery work is very physically demanding and I reached a point where I needed to slow down and that is when I retired.

4. Jo Ann: I am also 67 years old. I work as Garden Educator with a non-profit group in the Boston area. I have worked in urban community gardening for more than 10 years and previously worked in public school settings.

5. Bette Jo and Jo Ann: We live together in a single family home that we own in Jamaica Plain. We are deeply involved in our local community. We both volunteer and are active in our Neighborhood Watch. Bette Jo takes elderly neighbors on shopping trips,

and both of us help at programs for local children and youth, including weekly summer barbecues.

6. Jo Ann: We are both cancer survivors. I survived a difficult fight with bone cancer and, afterwards, had to reduce my working hours because of ongoing fatigue.

7. Bette Jo: I suffered from both uterine and cervical cancer. Several of my female relatives died from cancer.

8. Bette Jo and Jo Ann: We remain conscious of the risk of recurrence of cancer, and of Bette Jo's family history. Jo Ann just had a scare with a tumor on her left kidney that turned out to be benign.

9. Bette Jo and Jo Ann: We have many supportive family members, primarily in the Midwest. We make annual trips to spend time with our families.

10. Jo Ann: In February 2008, when I was 66 years old, I applied for and began receiving Social Security retirement benefits based on my Social Security earnings record. I continue to receive Social Security retirement benefits based on my own earnings record.

11. Bette Jo: In February 2008, at the age of 65 years and 10 months and in anticipation of my retirement from nursing, I applied for and began receiving Social Security retirement benefits on my own earnings record.

12. Jo Ann: Bette Jo has had higher lifetime earnings than I have. DOMA blocks my ability to receive benefits based on Bette Jo's earnings record. This hurts me and us in three ways. First, I could receive a larger monthly Social Security benefit amount if I could draw on the spousal benefit rather than relying solely on my own earnings record. Right now, the annual difference from my not receiving the spousal benefit is about \$400 per year, an amount that makes a difference to us.

13. Jo Ann: Second and a greater financial harm, if I could receive spousal benefits based on Bette Jo's earnings record, I could delay my retirement age for purposes of Social Security based on my own earnings record, which would increase my benefit amount later. If I could receive spousal benefits now as other spouses can, I would delay my own retirement age until 70, which would increase my payment to \$1,315, rather than the \$1,018 I currently receive. That is \$3,600 per year that I will lose beginning at age 70.

14. Bette Jo and Jo Ann: Third, what worries us is that there are much bigger consequences down the road for Social Security not recognizing our marriage. We have an ongoing concern, especially in light of our health histories, about Jo Ann's lack of access to the Social Security survivor benefit in the event that Bette Jo dies first. It would be very hard for Jo Ann to live on just her benefit, which is less than half of what Bette Jo receives. If this happens, and Jo Ann is denied the survivor benefit, she will lose about \$12,864 per year (at today's rates).

15. Bette Jo and Jo Ann: DOMA makes our retirement finances much more complicated, and makes us worried about what will happen in the future. As we plan and budget our yearly expenses, there is the concern that if Bette Jo died before Jo Ann, Jo Ann would have no safety net and would not be able to meet the costs of living, including maintaining our home, as well as paying for food and non-insured medical care.

16. Jo Ann: Without the survivor benefit, I would be without the love of my life and I worry that I would likely never be able to visit my family and friends in the Midwest, as the cost of traveling would become prohibitive on such a small budget.

17. Jo Ann: On March 26, 2008, I went in person to the Boston office of the SSA and applied for the Social Security spousal benefit based on Bette Jo's earnings record, because I want to be treated the same as other spouses.

18. Jo Ann: The SSA denied my claim for spousal benefits in an April 2008 letter. The letter stated that: "Since the Defense of Marriage Act prohibits SSA from finding that your [sic] and the insured were married for benefit purposes, you are not eligible for Spouse's Benefits."

19. Jo Ann: I appealed, and on January 17, 2009, the SSA responded with another denial. I then entered an Expedited Appeals Process ("EAP") agreement with the SSA. The EAP allows me to bring my claim in federal court.

20. Bette Jo and Jo Ann: In addition to these financial harms and concerns, DOMA also affects us in other ways. Even though we are legally married, our own government is denying the validity of our marriage and that forces us to explain ourselves all the time, even sometimes to family members.

21. Bette Jo and Jo Ann: DOMA makes us feel erased, like we don't even exist. Also, we believe it reinforces negative views that others may hold – it promotes discrimination by others.

22. Bette Jo: After our marriage, I was surprised that we didn't get equal tax treatment with respect to our health care coverage. Jo Ann had been on my health insurance plan at the hospital before marriage. After marriage, I still had to pay federal income taxes on imputed income attributable to the value of Jo Ann's coverage. That didn't change with marriage, and it seemed unfair.

Signed under the pains and penalties of perjury on this 15<sup>th</sup> day of November, 2009.

/s/ Bette Jo Green

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Bette Jo Green

/s/ Jo Ann Whitehead

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Jo Ann Whitehead

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 17, 2009.

/s/ Gary D. Buseck \_\_\_\_\_

Gary D. Buseck